

percent of the last recorded annual output in the market area;

(3) The project will replace or restore capacity recently destroyed by flood, fire, wind, or other natural disaster;

(4) The project will assure the retention of the physical capacity and/or employment;

(5) The project will replace, rebuild or modernize, within the same labor market area, facilities displaced by official governmental action;

(6) The project assures completion of a project previously assisted by EDA where further funding is required because of revised project cost estimates, rather than for additional productive capacity;

(7) When the purpose of research or evaluation grants or cooperative agreements is to determine the causes of or to assist in the formulation of programs to address, or to provide personnel needed to conduct programs concerning unemployment, underemployment, underdevelopment, or chronic depression;

(8) When the purpose of planning grants to state or local governments, or regional or area organizations is to fund administrative expenses of a planning process or for the preparation of economic development plans or programs;

(9) When a technical assistance grant is not designed to assist a specific firm or group of firms or lead directly to expanded productive capacity or output of specific goods or services for sale in a designated market area; and

(10) PWIP projects.

[60 FR 49678, Sept. 26, 1995, as amended at 61 FR 7984, Mar. 1, 1996; 61 FR 45738, Aug. 29, 1996]

#### **§ 316.4 Nonrelocation.**

(a) General requirements for nonrelocation for funding under PWEDA are as follows:

(1) EDA financial assistance will not be used to assist employers who transfer jobs from one commuting area to another. A commuting area ("area") is that area defined by the distance people travel to work in the locality of the project receiving EDA financial assistance;

(2) Every applicant for EDA financial assistance has an affirmative duty to

inform EDA of any employer who will benefit from such assistance who will transfer jobs (not persons) in connection with the EDA grant;

(3) EDA will determine compliance with this requirement prior to grant award based upon information provided by the applicant during the project selection process; and

(4) Each applicant and identified primary beneficiary of EDA assistance, which for purposes of this section means an entity providing the economic justification for the project, must submit its certification of compliance with this section, and other applicable information as determined by EDA.

(b) The nonrelocation requirements stated in paragraph (a) of this section shall not apply to businesses which:

(1) Relocated to the area prior to the date of applicant's request for EDA assistance;

(2) Have moved or will move into the area primarily for reasons which have no connection to the EDA assistance;

(3) Will expand employment in the area where the project is to be located substantially beyond employment in the area in which the business had originally been located;

(4) Are relocating from technologically obsolete facilities to be competitive;

(5) Are expanding into the new area by adding a branch, affiliate, or subsidiary while maintaining employment levels in the old area or areas; or

(6) Are determined by EDA to be exempt.

#### **§ 316.5 Electric and gas facilities.**

(a) General requirements for funding under PWEDA are as follows:

(1) Except for those types of facilities listed in paragraph (a)(2), (b) and (c) of this section, no financial assistance authorized under PWEDA will be used to finance:

(i) The cost of facilities for the generation, transmission, or distribution of electrical energy; or

(ii) For the production or transmission of natural, manufactured or mixed gas.

(2) Electric or gas facilities are eligible to receive EDA funding under

## § 316.6

PWEDA if they meet the following requirements:

(i) Those specifically authorized by Congress; or

(ii) If not funded, jobs will be lost or reduced or new jobs will not be created, provided the following findings are made:

(A) EDA determines that project financing is not available from private lenders or other Federal agencies on terms which, in the opinion of EDA, would permit completion and operation of the project; and

(B) The Federal or state agency regulating such facility makes one of the following determinations:

(1) There would not be any competition with existing public utilities under their jurisdiction in public rate charges; and

(2) There would be such competition as described in paragraph (a)(2)(ii)(B)(1) of this section, but existing public utilities are unable or unwilling to meet the increase in demand for such energy.

(b) Electrical facilities may also be funded if such funds would be used for:

(1) An internal electrical system (system) on the consumer side of the distribution metering station, including for example, conductors, conduits, structures, switchgear, transformers and other appurtenances; provided such system meets the following requirements:

(i) It is owned by the owner of all or a portion of the facility served by such system; and

(ii) Electricity carried on such system will not be resold.

(2) Standby electrical generating equipment, provided that such equipment is:

(i) Incapable of and not intended to provide service on a regular and continuous basis; and

(ii) Needed to prevent significant damage or harm resulting from a power failure.

(3) Facilities for replacement or expansion of existing public utilities when the area served will remain unchanged;

(4) Otherwise eligible components of projects which generate electricity but which also have other purposes, such as heating; or

## 13 CFR Ch. III (1–1–99 Edition)

(5) Electrical generation facilities which use waste as an alternative to conventional fuels.

(c) Gas facilities, including those needed for local storage, regulation and consumer metering, may also be funded if for the distribution of gas from the plant and metering station to consumers within a particular area.

### § 316.6 Procedures in disaster areas.

When non-statutory EDA administrative or procedural conditions for financial assistance awards cannot be met by applicants under PWEDA as the result of a disaster, EDA may waive such conditions.

### § 316.7 Project servicing for loans and loan guarantees.

EDA will provide project servicing to borrowers and lenders who received EDA loans and/or guaranteed loans under any programs administered by EDA. This includes but is not limited to loans under PWEDA, the Trade Act and the Community Emergency Drought Relief Act of 1977.

(a) EDA will continue to monitor such loans and guarantees in accordance with the loan or guarantee program.

(b) Borrowers/lenders shall submit to EDA any requests for modifications of their agreements with EDA. EDA shall, in accordance with applicable laws and policies, including the Federal Credit Reform Act of 1990 (2 U.S.C. 661 c(e)), consider and respond to such modification requests.

(c) In the event that EDA determines it necessary or desirable to take actions to protect or further the interests of EDA in connection with loans or guarantees made or evidences of indebtedness purchased, EDA may:

(1) Assign or sell at public or private sale, or otherwise dispose of for cash or credit, in its discretion and upon such terms and conditions as it shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by it in connection with financial assistance extended;

(2) Collect or compromise all obligations assigned to or held by it in connection with EDA financial assistance